

2828  
**No. 11909**

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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**HAWAIIAN TRUST COMPANY, LIMITED,**  
Executor of the Will of Laura D. Sherman,  
Appellant,  
vs.

**AGNES M. KANNE, Executrix under the Will of**  
**Fred H. Kanne, Deceased,**  
Appellee.

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**Transcript of Record**

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**Upon Appeal from the District Court of the United States**  
**for the Territory of Hawaii**

**FILED**

**JUN 24 1948**

**PAUL P. O'BRIEN,**

**CLERK**



No. 11909

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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HAWAIIAN TRUST COMPANY, LIMITED,  
Executor of the Will of Laura D. Sherman,  
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Upon Appeal from the District Court of the United States  
for the Territory of Hawaii

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
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For the Plaintiff, Hawaiian Trust Company,  
Limited:

ANDERSON, WRENN & JENKS,  
By JAMES M. RICHMOND,  
Bank of Hawaii Building,  
Honolulu, T. H.

For the Defendant, Agnes M. Kanne, etc.:

LELAND T. ATHERTON,  
Special Assistant to the Attorney General  
of the United States,  
Washington, D. C.

UNITED STATES DISTRICT ATTORNEY,  
By EDWARD A. TOWSE,  
Assistant United States District Attorney,  
Federal Building,  
Honolulu, T. H. [2\*]

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court for the  
District of Hawaii

Civil No. 619

HAWAIIAN TRUST COMPANY, LIMITED,  
Executor of the Will of Laura D. Sherman,  
Plaintiff,

vs.

AGNES M. KANNE, Executrix Under the Will  
of Fred H. Kanne, Deceased,  
Defendant.

### CLERK'S STATEMENT

Time of Commencing Suit:

October 30, 1945 — Complaint with Exhibits  
Filed

Names of Original Parties:

Laura D. Sherman, Plaintiff  
Fred H. Kanne, Defendant

Dates of Filing Pleadings:

February 27, 1946—Answer

March 25, 1947—Motion to Substitute Execu-  
trix as Defendant with Consent of Executrix

July 22, 1947—Motion to Substitute Executor  
as Plaintiff with Consent of Defendant

September 24, 1947—Stipulation of Facts

November 21, 1947—Special Findings of Fact  
and Conclusions of Law

February 17, 1948—Judgment of Dismissal



Times When Proceedings Were Had:

November 10, 1947—Trial [3]

Proceedings in the above-entitled matter were had before the Honorable D. E. Metzger, Judge, United States District Court, District of Hawaii.

Dates of Filing Appeal Documents:

March 17, 1948—Notice of Appeal

Bond for Costs on Appeal

March 29, 1948—Statement of Points Relied Upon on Appeal

Designation of Record on Appeal

April 5, 1948—Order Extending Time to File and Docket Records with the United States Circuit Court of Appeals for the Ninth Circuit

CERTIFICATE OF CLERK TO THE  
ABOVE STATEMENT

United States of America,  
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause, the names of the original parties, the dates when the respective pleadings were filed, the times when proceedings were had, the name of the judge presiding, and the dates when appeal pleadings were filed in the above-entitled cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 19th day of April, 1948.

[Seal]      /s/ WM. F. THOMPSON, JR.,  
Clerk, United States District  
Court, District of Hawaii.

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In the United States District Court for the  
Territory of Hawaii

Civil No. 619

LAURA D. SHERMAN,

Plaintiff,

vs.

FRED H. KANNE, Collector of Internal Revenue  
of the United States for the District of Hawaii,  
Defendant.

### COMPLAINT

Laura D. Sherman, a resident of the Territory of Hawaii, brings this action against the defendant, Fred H. Kanne, Collector of Internal Revenue of the United States for the District of Hawaii, and complains and alleges as follows:

#### I.

The grounds upon which the jurisdiction of this Court depends are:

1. This is a civil action by a citizen of the Territory of Hawaii against a Collector of Internal

Revenue of the United States for the recovery of income taxes illegally assessed and collected and arises under the act of March 2, 1929, Chapter 488, Section 1, 45 Stat. 1475; U.S.C., title 28, sec. 41 (5), as hereinafter more fully appears.

2. The plaintiff has complied with the requirements of section 3772 (a) (1) and (2) of the Internal Revenue Code regarding the filing of claim for refund with the Commissioner of Internal Revenue, as hereinafter more fully appears. [6]
3. Defendant Fred H. Kanne is now and at all times since on or about August 1, 1933, has been Collector of Internal Revenue of the United States for the District of Hawaii and is a resident of said Hawaii, and that plaintiff claims of defendant the sum of \$2,404.46 with interest as provided by law, representing income taxes illegally exacted from plaintiff by defendant as hereinafter more fully appears.

## II.

On December 26, 1935, George Sherman, husband of the plaintiff, entered into an agreement with the plaintiff and Hawaiian Trust Company, Limited, a Hawaiian corporation, a true copy of which agreement is annexed hereto, marked Exhibit "A" and hereby made a part hereof. Said agreement created an irrevocable trust of which Hawaiian Trust Company, Limited, and plaintiff were and are trustees and provided that all of the net income derived

from the trust estate be paid to plaintiff during her lifetime.

### III.

Frederick Dickson Nott, son of the plaintiff, was divorced from Anna Adams Nott by a decree of final divorce on April 28, 1936, in action numbered Divorce 16861 in the files of the Clerk of the Circuit Court of the First Judicial Circuit, Territory of Hawaii. The decree directed said Frederick Dickson Nott to pay alimony of \$100 per month to the divorced wife and in addition to pay her \$75 per month each for the support and maintenance of Frederick Dickson K. Nott and Gretchen K. Nott, minor children of the Notts, whose custody was awarded to said Anna Adams Nott. [7]

### IV.

By three separate instruments, each dated April 16, 1936, the plaintiff made assignments of her right to receive income from said trust estate in the amounts of \$100 per month to Anna Adams Nott until her death or remarriage, whichever should first occur, and \$75 per month each to said Anna Adams Nott for the support of each of said Frederick Dickson K. Nott and Gretchen K. Nott until the respective child's death or majority, whichever should first occur. True copies of said assignments are attached hereto, marked repectively Exhibits "B," "C" and "D," and are hereby made a part hereof. These assignments were made because said Frederick Dickson Nott did not have sufficient income to enable him to pay the amounts

to be ordered in the divorce decree and because the plaintiff desired to assist him financially. Said Frederick Dickson K. Nott and Gretchen K. Nott were ten and nine years of age, respectively, at the time of said assignments.

#### V.

The said assignments were assignments of beneficial interests in and to the corpus of said trust estate and the assignees thereby became owners of the said beneficial interests, which during the taxable years in question produced income of \$3,000.00 per annum. The plaintiff by said assignment effected a transfer of income-bearing property to and for the benefit of the assignees and the income thereafter received therefrom is the income of the assignees and not that of the plaintiff. [8]

#### VI.

During the calendar year 1940 the distributable share of plaintiff in the income of said trust estate and the amount actually received by her was \$6,332.40. During the calendar year 1941 the distributable share of plaintiff in the income of said trust estate and the amount actually received by her was \$7,598.98. During each of the said years the distributable share of the assignees in the income of said trust estate and the amount actually received by them was \$3,000.00.

#### VII.

The trustees' fiduciary income tax returns for the said trust estate for the years 1940 and 1941

inadvertently showed the plaintiff's distributive share of income to include the \$3,000.00 of income which had been assigned and distributed to the assignees. Because of this inadvertent error plaintiff's distributive shares of income from said trust estate were shown to have been \$9,332.40 and \$10,598.98 for the respective calendar years 1940 and 1941. The plaintiff also inadvertently returned the same amounts as received by her from said trust estate for the years 1940 and 1941. Plaintiff paid income taxes for the year 1940 in the amount of \$4,096.50 to the defendant. Said taxes were paid in equal quarterly instalments on March 15, June 15, September 15 and December 15, 1941. Plaintiff paid income taxes for the year 1941 in the amount of \$6,046.15 to the defendant. Said taxes were paid in equal quarterly instalments on March 15, June 15, September 15 and December 15, 1942. [9]

#### VIII.

The correct amount of plaintiff's income tax for the year 1940 was \$3,126.85 if the amount of income of said trust estate taxable to the plaintiff during 1940 was \$6,332.40. The correct amount of plaintiff's income tax for the year 1940 was \$4,096.50 if the amount of income of said trust estate taxable to the plaintiff during 1940 was \$9,332.40. The correct amount of plaintiff's income tax for the year 1941 was \$4,611.34 if the amount of income of said trust estate taxable to the plaintiff during 1941 was \$7,598.98. The correct amount of plaintiff's income tax for the year 1941 was \$6,046.15



if the amount of income of said trust estate taxable to the plaintiff during 1941 was \$10,598.98.

### IX.

The correct income tax liabilities of plaintiff to the United States of America for the years 1940 and 1941 were \$3,126.85 and \$4,611.34, respectively. Amounts in excess thereof equalling \$969.65 and \$1,434.81 for the years 1940 and 1941, respectively, have been illegally assessed and collected by the defendant and should be returned to the plaintiff. Said amounts were so assessed and collected on the basis that the said \$3,000.00 distributed by the said trustees to the assignees for each of the years 1940 and 1941 was income taxable to the plaintiff.

### X.

On March 14, 1944, plaintiff filed with the Commissioner of Internal Revenue a claim for refund of said \$969.65 of 1940 [10] income taxes and a claim for refund of said \$1,434.81 of 1941 income taxes. True copies of said claims are attached hereto, marked respectively Exhibits "E" and "F," and hereby made a part hereof. No action has been taken by said Commissioner on either of said claims for a period in excess of six months from the time of filing said claims with him. Said claims have been disallowed by the said Commissioner.

### XI.

No amount has been paid to the plaintiff on account of said total sum of \$2,404.46 claimed as in-

come tax and so illegally assessed and collected by the defendant from the plaintiff.

## XII.

Plaintiff is entitled to receive from defendant the said sum of \$2,404.46, together with interest on \$969.65 from December 15, 1941, and interest on \$1,434.81 thereof from December 15, 1942, until the same is paid. Plaintiff has observed and performed the provisions and requirements of the laws of the United States and the rules and regulations prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury of the United States, and all other matters and things necessary or required to be observed and performed on her part to entitle her to recover the same.

Wherefore, plaintiff prays judgment against defendant in the sum of \$2,404.46, plus interest, as is in such cases [11] provided by section 3773, Internal Revenue Code; U.S.C., title 28, sec. 284, and the costs of such suit and that process issue out of this court requiring defendant to appear and answer this complaint.

Dated at Honolulu, Hawaii, October 26, 1945.

/s/ JAMES M. RICHMOND,

Bank of Hawaii Building,

Honolulu, Hawaii,

Attorney for Plaintiff.

Of Counsel:

ANDERSON, WRENN & JENKS,

Bank of Hawaii Building,

Honolulu, Hawaii.



Territory of Hawaii,  
City and County of Honolulu—ss.

Laura D. Sherman, being first duly sworn, on oath deposes and says: That she is the plaintiff in the above entitled action, that she has read the foregoing complaint and knows the contents thereof and that the same are true of her own knowledge.

/s/ LAURA D. SHERMAN

Subscribed and sworn to before me this 26th day of October, 1945.

[Seal] /s/ ALLEN R. MOORE,  
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1949.

[Endorsed]: Filed Oct. 30, 1945. [12]

EXHIBIT "A"

(Copy)

This Agreement made this 26th day of December, 1935, by and between George Sherman, of Honolulu, Territory of Hawaii, hereinafter called the Settlor, party of the first part, and Laura D. Sherman, of said Honolulu, and Hawaiian Trust Company, Limited, a Hawaiian corporation having its principal office in said Honolulu, hereinafter called the Trustees, parties of the second part,

Witnesseth:

That the Settlor for and in consideration of the execution hereof by the Trustees and of love and affection for the beneficiaries hereinafter named, does hereby assign, transfer, convey and deliver to

the Trustees all of the following shares of corporation capital stock:

- 6700 shares of the common capital stock of American Factors, Limited;
- 875 shares of the common capital stock of Bishop National Bank of Hawaii at Honolulu;
- 500 shares of the common capital stock of Bishop Trust Company, Limited;
- 250 shares of the preferred capital stock of Bishop Trust Company, Limited.

To Have and to Hold the same unto the Trustees and their successors in trust and assigns, in trust, upon the following trusts:

1. The Trustees shall pay to Laura D. Sherman, wife of the Settlor, during the remainder of her life all of the net income derived from said trust estate.

2. Upon the death of said Laura D. Sherman, Hawaiian Trust Company, Limited, as remaining Trustee, shall divide said trust estate into two equal parts, referred to hereinafter as "trust estate A" and "trust estate B," the said division and the equality of the parts to be determined by said Trustee in its sole discretion [13] and to be binding on all the beneficiaries hereunder;

(a) After the death of said Laura D. Sherman, said remaining Trustee shall pay the net income derived from said trust estate A to the Settlor's stepdaughter, Laura Nott Dowsett, so long as she shall live, and after her death to those who shall be surviving from time to time of her children and their issue, in accordance with their respective needs, without obligation to divide the same equally

or proportionately, until the youngest who shall continue to survive of the now living children of the Settlor's stepdaughter shall reach the age of thirty years or the last survivor of her now living children shall die.

(b) When the Settlor's stepdaughter, Laura Nott Dowsett, shall have died and also either the youngest who shall continue to survive of her now living children shall have reached the age of thirty years or the last survivor of her now living children shall have died, the Trustee shall transfer, convey and deliver, absolutely and free from any trust, the principal of said trust estate A, together with any unpaid income derived therefrom, in equal shares to those who shall be then surviving of the children of the Settlor's stepdaughter and of the issue of any of them who shall be then dead, such issue taking per stirpes by right of representation in each generation, or if none of the children or issue of deceased children of the Settlor's stepdaughter shall be then surviving, in equal shares to those who shall be then surviving of the children of the Settler's stepson, Frederick Dickson Nott, and of the issue of any of them who shall be then dead. such issue taking per stirpes by right of representation in each generation; provided, however, if [14] trust estate B under this trust agreement shall be then in existence, said property shall be added to said trust estate B, to be and become a part thereof and the income therefrom and the principal thereof to be distributed as provided under the terms governing said trust estate B.

(c) After the death of said Laura D. Sherman said remaining Trustee shall pay the net income derived from said trust estate B to the Settlor's stepson, Frederick Dickson Nott, so long as he shall live, and after his death to those who shall be surviving from time to time of his children and their issue, in accordance with their respective needs, without obligation to divide the same equally or proportionately, until the youngest who shall continue to survive of the now living children of the Settlor's stepson shall reach the age of thirty years or the last survivor of his now living children shall die.

(d) When the Settlor's stepson, Frederick Dickson Nott, shall have died and also either the youngest who shall continue to survive of his new living children shall have reached the age of thirty years or the last survivor of his now living children shall have died, the Trustee shall transfer, convey and deliver, absolutely and free from any trust, the principal of said trust estate B, together with any unpaid income derived therefrom, in equal shares to those who shall be then surviving of the children of the Settlor's stepson and of the issue of any of them who shall be then dead, such issue taking per stirpes by right of representation in each generation, or if none of the children or issue of deceased children of the [15] Settlor's stepson shall be then surviving, in equal shares to those who shall be then surviving of the children of the Settlor's stepdaughter, Laura Nott Dowsett, and of the issue of any of them who shall be then dead, such issue

taking per stirpes by right of representation in each generation; provided, however, if trust estate A under this trust agreement shall be then in existence, said property shall be added to said trust estate A, to be and become a part thereof and the income therefrom and the principal thereof to be distributed as provided under the terms governing said trust estate A.

3. The Settlor expressly reserves the right from time to time and at any time during his lifetime to add property to the trust estate by transfer of title to the Trustees and delivery to the Hawaiian Trust Company, Limited, as Trustee, and thereupon such additional property shall become part of the principal of the trust estate as if it had been originally included hereunder.

4. The following provisions shall apply during the life of the Settlor's wife to the trust estate hereby established and shall apply after her death to each of the parts into which said trust estate is to be divided upon her death, to wit: trust estate A and trust estate B, and whenever hereinafter the term "trust estate" is used it shall after the death of the Settlor's wife be taken to mean trust estate A and also trust estate B.

5. The Trustees shall have full power and authority to manage and control the property from time to time included in said trust estate, to sell at public or private sale, to exchange, [16] to borrow, to pledge, and to invest and reinvest. It is expressly provided that the Trustees shall have the right and power to invest any moneys at any



time or from time to time in their hands in common stocks and preferred stocks of corporation organized under the laws of the Territory of Hawaii or elsewhere in the United States of America and shall not be limited by any statute or rule of law to the contrary. The Trustees shall treat all stock dividends and rights to subscribe as principal, and all cash dividends, whether regular or extraordinary, unless paid out of capital, as income. The Settlor expressly declares that the shares of corporation capital stock hereby assigned by him to the Trustees have proved satisfactory investments during a considerable period of time and that he does not wish them sold unless the Trustees in their discretion shall think it clearly advisable because of changing conditions or other special reasons. The Trustees shall not be held liable for any loss to the trust estate resulting from the retention of said stock by them.

6. The Trustees shall not be required to file any accounts in any court but shall annually deliver an account to the Settlor's wife, Laura D. Sherman, so long as she shall live, and after her death to each adult beneficiary and to a parent or a guardian of each minor beneficiary. The Trustees shall not be required to give any bond as Trustees.

7. The Trustees shall not be liable for any error of judgment on their part in administering the trusts created hereby but shall each be liable only for her or its own gross neglect or wilful default.

8. Whenever the Trustees shall be required here-

under to make any payments to a minor, such payments may be made in the [17] discretion of the Trustees to a parent or guardian of said minor or to third parties for the benefit of said minor, on their respective receipts.

9. The Trustees shall be entitled to charge commissions at the rate of five per cent (5%) on the gross income derived from said trust estate, and commissions at the rate of one per cent (1%) on the principal of said trust estate on the final payment of the same either in cash or in kind.

10. Upon the termination of this trust the Trustees shall have full power at their option to assign, transfer and deliver to the person or persons then entitled thereto the property then forming the trust estate, or may convert the same into cash for payment of the net proceeds thereof to said person or persons.

11. While Laura D. Sherman is absent from the Territory of Hawaii or temporarily incapable of acting as Trustee by reason of sickness or otherwise, the Hawaiian Trust Company, Limited, shall have all the powers of the Trustees hereunder, and its certificate as to such absence or incapacity of Laura D. Sherman shall be conclusive.

12. In case said Laura D. Sherman shall die or resign or for any other reason shall cease to act or become incapable of acting as one of said Trustees, then and thereafter Hawaiian Trust Company, Limited, shall become and be the sole Trustee hereunder, with all rights and powers and subject to all

the duties herein given or imposed upon the two Trustees named herein, and title to the trust estate shall vest in said Hawaiian Trust Company, Limited, as such sole Trustee, without a conveyance of any kind from said Laura D. Sherman.

13. The Settlor shall have no right to revoke the trust [18] created hereby or to amend the terms or provisions hereof. The Hawaiian Trust Company, Limited, as Trustee, together with those of the Settlor's said stepdaughter and stepson who are at the time alive and capable of joining in the amendment acting unanimously shall have the right at any time to amend the terms and provisions hereof, provided that no amendment shall authorize or permit the payment or application of any part of the principal or income of the trust estate created hereby to or for the benefit of the Settlor or the payment or application of any part of the principal of the trust estate to or for the benefit of the Settlor's said wife.

14. Said Laura D. Sherman and said Hawaiian Trust Company, Limited, as said Trustees, hereby acknowledge the trusts hereby created and agree to perform the same upon the terms and conditions hereinabove set forth.

In Witness Whereof, the Settlor has set his hand hereunto, and said Laura D. Sherman has set her hand hereunto as Trustee, and said Hawaiian Trust Company, Limited, has caused its corporate name to be signed hereto and its corporate seal to be affixed hereunto by its proper officers, thereunto



duly authorized, as Trustee, all as of the day and year first above written, in triplicate.

/s/ GEORGE SHERMAN,  
Settlor.

/s/ LAURA D. SHERMAN.  
HAWAIIAN TRUST  
COMPANY, LIMITED,

By /s/ A. S. DAVIS,  
Its Vice Pres.

By /s/ U. J. RAINALTER,  
Its Vice Pres. [19]  
Trustees.

EXHIBIT "B"  
(Copy)

Know All Men by These Presents:

Whereas by the terms of a certain decree of divorce made and entered on the 28th day of April, 1936, in an action entitled "Anna Adams Nott, libellant, v. F. Dickson Nott, libellee," said action being numbered 16861 in the files of the Clerk of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, the libellant was granted an absolute decree of divorce from the libellee and the libellee was ordered to pay the sum of One Hundred Dollars (\$100.00) a month as alimony to the libellant, and

Whereas at the present time, the libellee's income is insufficient to enable him to pay the sums required of him to be paid by the terms of said decree, and

Whereas the said libellee is the son of the under-

signed Laura D. Sherman and by reason thereof the undersigned desires to assist him financially:

Now Therefore the premises considered, the undersigned, Laura D. Sherman, hereinafter referred to as the assignor, does hereby assign, transfer and set over unto Anna Adams Nott, hereinafter referred to as the assignee, the sum of One Hundred Dollars (\$100.00) a month from the income to which the assignor now is or shall be entitled to receive as life beneficiary under the terms and provisions of that certain unrecorded trust deed dated December 26, 1935, executed by George Sherman as settlor and the assignor and Hawaiian Trust Company, Limited, an Hawaiian corporation, as trustees, until the death or remarriage of the assignee whichever event shall first occur and upon the occurrence of either of said events this assignment shall become inoperative and shall be of no further force or effect. [20]

The Hawaiian Trust Company, Limited, co-trustee under said trust deed, is hereby empowered and directed to pay from the assignor's income, as aforesaid, the sum of One Hundred Dollars (\$100.00) a month to the said assignee, the first of such payments to be made on the 1st day of May, 1936, and a like sum on the 1st day of each and every month thereafter until the death or remarriage of said assignee, whichever event shall first occur, and upon the occurrence of either of such events of which said Hawaiian Trust Company, Limited shall have strict and exact proof, all payments shall cease and determine.

Dated at Honolulu, T. H., this 16 day of April, 1936.

/s/ LAURA D. SHERMAN. [21]

EXHIBIT "C"

(Copy)

This Agreement made this 16 day of April, 1936, between Laura D. Sherman of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter referred to as the assignor, and Anna Adams Nott, likewise of Honolulu, hereinafter referred to as the assignee,

Witnesseth:

Whereas by the terms of a certain decree of divorce made and entered on the 28th day of April, 1936, in an action entitled "Anna Adams Nott, libellant v. F. Dickson Nott, libellee" said action being numbered 16861 in the files of the Clerk of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, custody of Frederick Dickson K. Nott, minor child of the libellant and libellee, was awarded to the libellant and the libellee was ordered to pay to the libellant for the support and maintenance of said minor the sum of Seventy-Five Dollars (\$75.00) a month, and

Whereas, at the present time, the libellee's income is insufficient to enable him to pay the sums required of him to be paid by the terms of said decree, and

Whereas, the said libellee is the son of the assignor and the above mentioned minor is the assignor's grandchild and by reason thereof the

assignor desires to provide for the support, education and maintenance of said minor.

Now Therefore in consideration of the premises and of the promise of the assignee hereinafter contained the assignor does hereby assign, transfer and set over unto the assignee the sum of Seventy-five Dollars (\$75.00) a month from the income to which the assignor now is or shall be entitled to receive as life beneficiary under the terms and provisions of that certain unrecorded trust deed dated December 26, 1935, executed by George Sherman as settlor and the assignor and Hawaiian Trust Company, Limited, an Hawaiian corporation, as trustees, which sum is to be used by the assignee solely for the support, education and maintenance of said minor during his minority provided, however, and this assignment is upon this express condition, that upon the occurrence of any of the following events this assignment shall become inoperative and all payments authorized to be made herein shall cease and determine, such events being:

- (1) Upon the death of said minor or the assignee;
- (2) Upon the said minor attaining his majority under the laws of the jurisdiction in which said minor is then living;

The Hawaiian Trust Company, Limited, co-trustee under said trust deed, is hereby empowered and directed to pay from the assignor's income, as aforesaid, the sum of Seventy-five Dollars (\$75.00) a month to the said assignee, the first of such pay-

ments to be made on the 1st day of May, 1936, and a like sum of the 1st day of each and every month thereafter until the occurrence of any one or more of the above mentioned events and upon the occurrence of any of such events (of which said Hawaiian Trust Company, Limited, shall have strict and exact proof) all payments shall cease and determine. [23]

And the assignee in consideration of the foregoing does covenant and agree with the assignor that she will use such sums as are paid to her hereunder solely for the support, education and maintenance of said minor.

In Witness Whereof the parties hereto have set their hands the day and year first above written.

/s/ LAURA D. SHERMAN,

/s/ ANNA ADAMS NOTT. [24]

### EXHIBIT "D"

(Copy)

This Agreement made this 16 day of April, 1936, between Laura D. Sherman of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter referred to as the assignor, and Anna Adams Nott, likewise of Honolulu, hereinafter referred to as the assignee,

Witnesseth:

Whereas by the terms of a certain decree of divorce made and entered on the 28th day of April, 1936, in an action entitled "Anna Adams Nott, libellant v. F. Dickson Nott, libellee" said action being numbered 16861 in the files of the Clerk of



the Circuit Court of the First Judicial Circuit, Territory of Hawaii, custody of Gretchen K. Nott, minor child of the libellant and libellee, was awarded to the libellant and the libellee was ordered to pay to the libellant for the support and maintenance of said minor the sum of Seventy-five Dollars (\$75.00) a month, and

Whereas, at the present time the libellee's income is insufficient to enable him to pay the sums required of him to be paid by the terms of said decree, and

Whereas, the said libellee is the son of the assignor and the above mentioned minor is the assignor's grandchild and by reason thereof the assignor desires to provide for the support, education and maintenance of said minor.

Now Therefore in consideration of the premises and of the promise of the assignee hereinafter contained the assignor does hereby assign, transfer and set over unto the assignee the sum of Seventy-five Dollars (\$75.00) a month from the income to which the assignor now is or shall be entitled to receive as life beneficiary under the terms and provisions [25] of that certain unrecorded trust deed dated December 26, 1935 executed by George Sherman as settlor and the assignor and Hawaiian Trust Company, limited, an Hawaiian corporation as trustees, which sum is to be used by the assignee solely for the support, education and maintenance of said minor during her minority provided, however, and this assignment is upon this express condition, that upon the occurrence of any of the following events

this assignment shall become inoperative and all payments authorized to be made herein shall cease and determine, such events being:

- (1) Upon the death of said minor or the assignee;
- (2) Upon the said minor attaining her majority under the laws of the jurisdiction in which said minor is then living;

The Hawaiian Trust Company, Limited, co-trustee under said trust deed, is hereby empowered and directed to pay from the assignor's income, as aforesaid, the sum of Seventy-five Dollars (\$75.00) a month to the said assignee, the first of such payments to be made on the 1st day of May, 1936, and a like sum on the 1st day of each and every month thereafter until the occurrence of any one or more of the above mentioned events and upon the occurrence of any of such events (of which said Hawaiian Trust Company, Limited, shall have strict and exact proof) all payments shall cease and determine, [26]

And the assignee in consideration of the foregoing does covenant and agree with the assignor that she will use such sums as are paid to her hereunder solely for the support, education and maintenance of said minor.

In Witness Whereof the parties hereto have set their hands the day and year first above written.

/s/ LAURA D. SHERMAN.

/s/ ANNA ADAMS NOTT.





C O P Y

Form 642  
TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
(Revised April 1945)

# CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- ☐ REFUND OF TAX ILLEGALLY COLLECTED.
- ☐ REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN ERROR OR EXCESS.
- ☐ ABATEMENT OF TAX ASSESSED (not applicable to estate or income taxes).

COLLECTOR'S STAMP (Date received)
--------------------------------------

STATE OF TERRITORY OF HAWAII  
CITY & COUNTY OF HONOLULU ss:

Name of taxpayer or purchaser of stamps LAURA D. SHERMAN  
Business address 2 Hawaiian Trust Company, Limited  
(Street) (City) (State)  
Residence Honolulu, Hawaii

TYPE  
OR  
PRINT

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Honolulu, Hawaii
2. Period (if for income tax, make separate term for each taxable year) from Jan. 1st, 1940, to Dec. 31st, 1940
3. Character of assessment or tax Income Tax
4. Amount of assessment, \$ 4096.50; dates of payment 3/15/41; 6/15/41; 9/15/41; 12/15/41
5. Date stamps were purchased from the Government
6. Amount to be refunded \$ 969.65
7. Amount to be abated (not applicable to income or estate taxes) \$ I.R.C.
8. The time within which this claim may be legally filed expires, under Section 322(b)(1) of the REVENUE TAX of 1939 on March 15, 1944

The deponent verily believes that this claim should be allowed for the following reasons:

Taxpayer's return for the calendar year 1940 reflected at line 7, income from the George Sherman Living Trust of December 26, 1935 in the sum of \$3,324.40 which amount was in agreement with taxpayer's distributive share of the income of said trust as returned on Fiduciary Form 1041 by Hawaiian Trust Company, Limited as trustee of said trust. Said distributive share as inadvertently overstated on the fiduciary return by the sum of \$3000.00 and therefore also overstated on taxpayer's return for the reason that taxpayer, by irrevocable written assignments providing for the distribution of \$3000.00 of the income of other persons, was only entitled to and actually received \$3000.00 less than the distribution returned by the trustee as payable to taxpayer.

Adjustment of taxpayer's return for the year 1940 to eliminate said \$3000.00 of overstated income would result in a corrected tax liability of \$3,126.85 whereas a tax of \$4,096.50 has been collected, resulting in an overassessment of \$969.65, which should be refunded together with statutory interest.

(Attach letter-exchange sheets if space is not sufficient)

Sworn to and subscribed before me this

Signed (s) LAURA D. SHERMAN

11th day of March 1944

Notary Public, First Judicial

(s) LOUIS A. WILLS Circuit, Territory of Hawaii

(Signature of officer administering oath)

My commission expires June 30, 1945.

(SEE INSTRUCTIONS ON REVERSE SIDE)

EXHIBIT "E"

28



COPY

28

Form 843  
TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
(Revised Jan. 1946)

# CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- ☐ REFUND OR TAX ILLEGALLY COLLECTED.
- ☐ REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN ERROR OR EXCESS.
- ☐ ABATEMENT OF TAX ASSESSED (not applicable to estate, gift, or income taxes).

COLLECTOR'S STAMP

(Date received)

~~STATE OF~~ TERRITORY OF HAWAII  
CITY & } ss:  
COUNTY OF HONOLULU }

Name of taxpayer or purchaser of stamps LAURA D. SHERMAN

Business address % HAWAIIAN TRUST CO., LTD., HONOLULU, T. H.  
(Street) (City)

Residence HONOLULU, HAWAII

TYPE  
OR  
PRINT

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

- District in which return (if any) was filed Honolulu, Hawaii
- Period (if for income tax, make separate form for each taxable year) from Jan. 1st, 1941 to Dec. 31st, 1941
- Character of assessment or tax Income tax
- Amount of assessment, \$ 6046.15; dates of payment 3/15/42; 6/15/42; 9/15/42; 12/15/42
- Date stamps were purchased from the Government
- Amount to be refunded \$ 1434.81
- Amount to be abated (not applicable to income, gift, or estate taxes) (b)(1) \$
- The time within which this claim may be legally filed expires, under section 333 of I.R.C. of 1939 (Revenue Act or Internal Revenue Code) on March 15, 1945

The deponent verily believes that this claim should be allowed for the following reasons:

Taxpayer's return for calendar year 1941 reflected at line 9, income from George Sherman Living Trust of December 26, 1935 in the sum of \$10,598.98 which amount was in agreement with taxpayer's distributive share of the income of said trust as returned on Fiduciary Form 1041 by Hawaiian Trust Company, Limited as trustee of said trust. Said distributive share was inadvertently overstated on the fiduciary return by the sum of \$3000.00 and therefore also overstated on taxpayer's return for the reason that taxpayer, by irrevocable written assignments providing for the distribution of \$3000.00 of the income to other persons, was only entitled to and actually received \$3000.00 less than the distribution returned by the trustee as taxable to taxpayer.

Adjustment of taxpayer's return for the year 1941 to eliminate said \$3000.00 of overstated income would result in a corrected tax liability of \$611.34, whereas a tax of \$6,046.15 has been collected, resulting in an overassessment of \$1,434.81, which should be refunded together with statutory interest.

(Attach letter-size sheets if space is not sufficient)

Sworn to and subscribed before me this

Signed (S) LAURA D. SHERMAN

11th day of March, 1944

Notary Public, First Judicial Circuit, Territory of Hawaii

(s) LOUIS A. WILLS

(Signature of officer administering oath)

My commission expires June 30, 1945

(SEE INSTRUCTIONS ON REVERSE SIDE)

29

16-15504-2

EXHIBIT "F"



[Title of District Court and Cause.]

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon James M. Richmond, Bank of Hawaii Building, Honolulu, Hawaii, plaintiff's attorney, an answer to the complaint which is hereby served upon you, within sixty (60) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal]      /s/ WM. F. THOMPSON, JR.

Clerk of Court.

Dated: Honolulu, T. H. October 30th, 1945. [30]

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[Title of District Court and Cause.]

RETURN ON SUMMONS

Territory of Hawaii,

City and County of Honolulu—ss.

George E. Bruns, being first duly sworn on oath deposes and says:

That at all times hereinafter mentioned he has been and now is a Deputy United States Marshal for the Territory of Hawaii;

That on the 30th day of October, 1945, in Honolulu, City and County of Honolulu, Territory of Hawaii, he duly served a certified copy of the Sum-

mons, Complaint and Exhibits A-B-C-D-E and F in the above entitled cause upon Ray J. O'Brien, United States District Attorney, at Honolulu, T. H., and by mailing a certified copy of the said Summons, Complaint and Exhibits A-B-C-D-E and F by registered mail receipt wanted on October 30th, 1945, to Tom C. Clark, Attorney General of the United States of America, Washington, D. C., and further that on November 23rd, 1945, he duly served a certified copy of the said Summons, Complaint and Exhibits A-B-C-D-E and F upon Fred H. Kanne, Collector of Internal Revenue, at Honolulu, T. H.

Dated at Honolulu, T. H., this 23rd day of November, A.D. 1945.

/s/ GEORGE E. BRUNS.

Subscribed and sworn to before me this 23rd day of November, A.D. 1945.

[Seal] /s/ ALFRED F. OCAMPO,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission Expires June 30, 1949. [31]

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Territory of Hawaii  
City and County of Honolulu—ss.

I, Arthur E. Restarick, Chief Clerk of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, the same being a Court of Record and having a seal, do hereby certify that Alfred F. Ocampo



before whom the foregoing acknowledgment was taken, was at the time of taking the same, A Notary Public duly sworn for the First Judicial Circuit of the Territory of Hawaii and duly authorized by the laws of said Territory to take and certify acknowledgments or proofs of deeds of land, etc., in said Territory in the manner aforesaid; that I am well acquainted with the handwriting of said Alfred F. Ocampo and verily believe that the signature to said certificate of acknowledgment is genuine. And further, that said acknowledgment was taken in accordance with the laws of the Territory of Hawaii; that I have compared the impression of the seal affixed thereto with a specimen impression thereof deposited in my office and that I believe the impression of the seal upon the original certificate is genuine.

In Testimony whereof I have hereunto set my hand and affixed the seal of said court at Honolulu aforesaid this 23rd day of November 1945.

/s/ ARTHUR E. RESTARICK,  
Chief Clerk, Circuit Court First Judicial Circuit,  
Territory of Hawaii.

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[Title of District Court and Cause.]

### ANSWER

Comes now the defendant by its attorney, Ray J. O'Brien, United States Attorney for the Territory of Hawaii, and in answer to plaintiff's complaint admits and denies as follows:

1.

Admits all the allegations contained in paragraph I of plaintiff's complaint, except denies that the income taxes were illegally exacted from the plaintiff.

2.

States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph II of the complaint.

3.

States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph III of the complaint.

4.

Denies all the allegations contained in paragraph IV of plaintiff's complaint. [32]

5.

Denies all the allegations contained in paragraph V of plaintiff's complaint.

6.

Denies all the allegations contained in paragraph VI of plaintiff's complaint.

7.

Admits all the allegations contained in paragraph VII of plaintiff's complaint, except denies that the plaintiff inadvertently included \$3,000 of income which she purportedly assigned to her daughter-in-law and grandchildren.



8.

Denies all the allegations contained in paragraph VIII of plaintiff's complaint.

9.

Denies all the allegations contained in paragraph IX of plaintiff's complaint.

10.

Admits all the allegations contained in paragraph X of plaintiff's complaint.

11.

Admits all the allegations contained in paragraph XI of plaintiff's complaint, except denies that the tax was illegally assessed and collected from the plaintiff by the defendant.

12.

Denies all the allegations contained in paragraph XII of plaintiff's complaint.

Wherefore, defendant seeks judgment dismissing the complaint together with costs of this action.

/s/ RAY J. O'BRIEN,

United States Attorney.

[Endorsed]: Filed Feb. 27, 1946. [33]

[Title of District Court and Cause.]

MOTION TO SUBSTITUTE EXECUTRIX AS  
DEFENDANT WITH CONSENT OF EX-  
ECUTRIX.

In the above entitled cause, plaintiff shows that Fred H. Kanne, the above named defendant died on December 24, 1946, and that the Estate of said defendant has passed into the control of Agnes M. Kanne, as Executrix under the Will of said Fred H. Kanne, Deceased, said Agnes M. Kanne having qualified and been confirmed as such Executrix on February 4, 1947, as shown by the records of the Probate Court for the City and County of Honolulu, in the Territory of Hawaii.

Wherefore, plaintiff moves for an order substituting as party defendant herein, Agnes M. Kanne, Executrix as aforesaid, and that otherwise the record in the case may stand as now made and the case proceed on the pleadings and records heretofore filed in said cause. [35]

Dated: Honolulu, T. H., March 25, 1947.

ANDERSON, WRENN &  
JENKS,

By /s/ JAMES M. RICHMOND,  
Attorneys for Plaintiff.

It is agreed on behalf of the Estate of Fred H. Kanne, Deceased, that the above motion may be granted and the substitution made as therein requested.

Dated: Honolulu, T. H., March 25, 1947.

/s/ RAY J. O'BRIEN,

Attorney for Agnes M. Kanne Executrix under the  
Will and of the Estate of Fred H. Kanne, De-  
ceased.

Allowed:

Dated: March 25, 1947.

/s/ J. FRANK McLAUGHLIN,

United States District Judge.

Memorandum of Authorities

Sec. 58.74, Merten's Law of Federal Income Tax-  
ation, Vol. 10, pages 388, 390:

“Sec. 58.74. Suits Against Collectors. An action of assumpsit may be maintained against the collector of internal revenue who has actually collected an income tax. Such an action is personal in nature and therefore it does not abate when the collector's term expires, or upon his death. If the action against the collector has been commenced, his personal representative may be substituted as the defendant. A collector is liable to suit for taxes wrongfully collected even after his resignation or the expiration of his term. An action to recover taxes erroneously collected will not lie against the successor in office of the collector who collected the tax.”

(See also cases cited on page 390; footnotes 80 and 81.)

Smietanka v. Indiana Steel Co.,

257 U. S. 1, 66 L. Ed. 99, 42 S. Ct. 1.

Page 5:

“In Patton v. Brady, 184 U. S. 608, 46 L. Ed. 713, 22 S. Ct. Rep. 493, a suit against a collector, begun after the passage of this statute, it was held that it could be revived against his executrix, which shows again that the action is personal; as also does the fact that the collector may be held liable for interest.”

[Endorsed]: Filed March 25, 1947. [37]

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In the United States District Court for the  
Territory of Hawaii

Civil Action No. 619

LAURA D. SHERMAN,

Plaintiff,

v.

AGNES M. KANNE, Executrix under the Will of  
Fred H. Kanne, Deceased,

Defendant.

MOTION TO SUBSTITUTE EXECUTOR AS  
PLAINTIFF WITH CONSENT OF DE-  
FENDANT.

In the above entitled cause, Hawaiian Trust Com-

pany, Limited, Executor of the Will of Laura D. Sherman, deceased, shows that Laura D. Sherman, the above named plaintiff, died on June 11, 1947, and that Hawaiian Trust Company, Limited, has been qualified and confirmed as Executor of her Will on July 15, 1947, as shown by the records of the Circuit Court, First Judicial Circuit, Territory of Hawaii, in proceedings numbered Probate No. 14762.

Wherefore, Hawaiian Trust Company, Limited, Executor as aforesaid, moves for an order substituting it as such Executor as party plaintiff herein, and that otherwise the record in the case may stand as now made, and the case proceed [39] on the pleadings and records heretofore filed in said cause.

Dated: Honolulu, T. H., July 21, 1947.

/s/ JAMES M. RICHMOND,

Attorney for Hawaiian Trust Company, Limited,  
Executor of the Will of Laura D. Sherman,  
Deceased.

It is agreed by Agnes M. Kanne, Executrix under the Will and of the Estate of Fred H. Kanne, deceased, defendant, that the above Motion may be granted and the substitution be made as therein requested.

Dated: Honolulu, T. H., July 22, 1947.

/s/ RAY J. O'BRIEN,

Attorney for Agnes M. Kanne, Executrix under the  
Will and of the Estate of Fred H. Kanne,  
Deceased.

Allowed:

Dated: 7-22, 1947.

/s/ J. FRANK McLAUGHLIN,  
United States District Judge.

[Endorsed): Filed July 22, 1947. [40]

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In the United States District Court  
For the Territory of Hawaii

Civil No. 619

HAWAIIAN TRUST COMPANY, LIMITED,  
Executor of the Will of Laura D. Sherman,  
Deceased,

Plaintiff,

AGNES M. KANNE, Executrix under the Will of  
Fred H. Kanne, Deceased,

Defendant.

### STIPULATION OF FACTS

It is Hereby Stipulated by and between Hawaiian Trust Company, Limited, Executor of the Will of Laura D. Sherman, deceased, plaintiff above named, by James M. Richmond, its attorney, and Agnes M. Kanne, Executrix under the Will of Fred H. Kanne, deceased, defendant above named, by Ray J. O'Brien, United States Attorney for the District of Hawaii, her attorney, as follows:



## I.

The trust agreement, of which Exhibit A attached to plaintiff's Complaint is a copy, was duly executed and delivered, and the copy marked "Exhibit A" is a true copy thereof and may be received in evidence for all purposes for which the original might be received. [42]

## II.

Frederick Dickson Nott is a son of the said Laura D. Sherman, deceased, and was divorced from Anna Adams Nott by a decree of final divorce entered by the Circuit Court of the First Judicial Circuit, Territory of Hawaii, on April 28, 1936, in an action numbered Divorce No. 16861. The said decree directed said Frederick Dickson Nott to pay alimony in the sum of \$100 per month to the divorced wife and in addition to pay her \$75 per month each for the support and maintenance of Frederick Dickson K. Nott and Gretchen K. Nott (minor children of Frederick Dickson Nott and Anna Adams Nott, the custody of which children having been awarded to said Anna Adams Nott.

## III.

Three assignments, of which Exhibits B, C and D attached to plaintiff's Complaint are copies, were duly executed and delivered and may be received in evidence for all purposes for which the originals thereof might have been received and said copies are true copies of the originals; these assignments were made because Frederick Dickson Nott does not have sufficient income himself to pay the

amounts awarded in said decree of divorce and because the said Laura D. Sherman desired to assist him financially; on April 16, 1936, the date of said assignments, Frederick Dickson K. Nott was 10 years of age and Gretchen K. Nott was 9 years of age. [43]

Dated: Honolulu, T. H., September 19th, 1947.

HAWAIIAN TRUST

COMPANY, LIMITED,

Executor of the Will of Laura D. Sherman, Deceased, Plaintiff.

By /s/ JAMES M. RICHMOND,

Attorney for Plaintiff.

AGNES M. KANNE,

Executrix Under the Will of Fred H. Kanne, Deceased, Defendant.

By RAY J. O'BRIEN,

United States Attorney for  
the District of Hawaii,

By /s/ MAURICE SAPIENZA,

Attorney for Defendant.

Approved:

/s/ J. FRANK McLAUGHLIN,

Judge of the United States District Court for the  
District of Hawaii.

[Endorsed]: Filed Sept. 24, 1947. [44]

[Title of District Court and Cause.]

SPECIAL FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

SPECIAL FINDINGS OF FACT

Upon the record and evidence adduced in this case, the Court makes the following special findings of fact:

I.

That the facts were stipulated and admitted into evidence except those facts stated in the supplementary stipulation relating to the life expectancy of Anna Adams Nott, Frederick Dickson K. Nott, Gretchen K. Nott, and Laura D. Sherman, which were not admitted in evidence, on the ground that such information was wholly immaterial in the case.

II.

That Laura D. Sherman, before her death on June 11, 1947, and during the entire taxable years 1940 and 1941 involved herein, was a citizen of the United States of America and a resident of Honolulu, Territory of Hawaii. During the entire calendar years 1940 and 1941, Laura D. Sherman was married and living with her husband. In her Federal Income Tax Return for the taxable year 1940, Mrs. Sherman claimed a personal exemption of \$2,000.00 and an earned income credit of \$300.00. In her Federal Income Tax Return for the taxable year 1941, Mrs. Sherman claimed a personal exemption of \$1,500.00 and an earned income credit of \$300.00. All of said exemptions and credits were allowed.

## III.

On December 26, 1935, George Sherman, husband of Laura D. Sherman, executed an inter vivos, irrevocable trust, in which she and the Hawaiian Trust Company, Limited, a Hawaiian corporation, were designated as trustees, and it was provided therein that all of the net income derived from the trust estate should be paid to Laura D. Sherman during her lifetime.

## IV.

That during the calendar year 1940 the trustees of the aforesaid Sherman Trust actually paid to Laura D. Sherman the total sum of \$6,332.42 of the net income of the trust estate. During the calendar year 1941, the said trustees actually paid to Laura D. Sherman the total sum of \$7,598.98 of the net income of said trust estate. [47]

## V.

Frederick Dickson Nott, son of Laura D. Sherman, was divorced from Anna Adams Nott by a decree of divorce entered on April 28, 1936, in divorce number 16,861 in the files of the Clerk of the Circuit Court, First Judicial Circuit, Territory of Hawaii. The decree ordered alimony of \$100.00 per month for the divorced wife so long as she should remain unmarried, and in addition \$75.00 per month each for the support and maintenance of Frederick Dickson K. Nott and Gretchen K. Nott, minor children of the said libellant and libellee, until the minors should have respectively attained their majorities. The custody of the children was awarded to Anna Adams Nott.

## VI.

By separate documents, each dated April 16, 1936, Laura D. Sherman made assignments of \$100.00 per month to Anna Adams Nott until death or remarriage, whichever is earlier, and \$75.00 per month for each of the minor children until the respective children's death or majority, whichever is earlier, out of the income to which Laura D. Sherman was entitled from the said trust.

The pertinent part of the assignment to Anna Adams Nott to cover monthly payments of \$100.00 for her own use read as follows:

“Now Therefore the premises considered, the undersigned, Laura D. Sherman, hereinafter referred to as the assignor, does hereby assign, transfer and set over unto Anna Adams Nott, hereinafter referred to as the assignee, the sum of One Hundred Dollars (\$100.00) a month from the income to which the assignor now is or shall be entitled to receive as life beneficiary under the terms and provisions of that certain unrecorded trust deed dated December 26, 1935, executed by George Sherman as settlor and [48] the assignor and Hawaiian Trust Company, Limited, an Hawaiian corporation, as trustees, until the death or remarriage of the assignee whichever event shall first occur and upon the occurrence of either of said events this assignment shall become inoperative and shall be of no further force or effect.

“The Hawaiian Trust Company, Limited, co-trustee under said trust deed, is hereby em-

powered and directed to pay from the assignor's income, as aforesaid, the sum of One Hundred Dollars (\$100.00) a month to the said assignee, the first of such payments to be made on the 1st day of May, 1936, and a like sum on the 1st day of each and every month thereafter until the death or remarriage of said assignee, whichever event shall first occur, and upon the occurrence of either of such events of which said Hawaiian Trust Company, Limited, shall have strict and exact proof, all payments shall cease and determine."

The pertinent part of the assignment to cover the payments of \$75.00 per month for the support and maintenance of each of the minor children reads as follows:

"Now Therefore in consideration of the premises and of the promise of the assignee hereinafter contained the assignor does hereby assign, transfer and set over unto the assignee the sum of Seventy-Five Dollars (\$75.00) a month from the income to which the assignor now is or shall be entitled to receive as life beneficiary under the terms and provisions of that certain unrecorded trust deed dated December 26, 1935, executed by George Sherman as settlor and the assignor and Hawaiian Trust Company, Limited, an Hawaiian corporation, as trustees, which sum is to be used by the assignee solely for the support, education and maintenance of said minor during his minority



provided, however, and this assignment is upon this express condition, that upon the occurrence of any of the following events this assignment shall become inoperative and all payments authorized to be made herein shall cease and determine, such events being:

- (1) Upon the death of said minor or the assignee;
- (2) Upon the said minor attaining his majority under the laws of the jurisdiction in which said minor is then living; [49]

“The Hawaiian Trust Comany, Limited, co-trustee under said trust deed, is hereby empowered and directed to pay from the assignor’s income, as aforesaid, the sum of Seventy-Five Dollars (\$75.00) a month to the said assignee, the first of such payments to be made on the 1st day of May, 1936, and a like sum on the 1st day of each and every month thereafter until the occurrence of any one or more of the above mentioned events and upon the occurrence of any of such events (of which said Hawaiian Trust Company, Limited, shall have strict and exact proof) all payments shall cease and determine.”

## VII.

The aforesaid assignments were made because Frederick Dickson Nott, son of taxpayer, did not have sufficient income himself to pay the amounts awarded in said decree of divorce and because Laura

D. Sherman desired to assist him financially. The aforesaid assignments were not made for the purpose of avoidance of taxes.

### VIII.

On April 16, 1936, the date of the assignments, Frederick Dickson K. Nott was approximately ten years of age, Gretchen K. Nott was approximately nine years of age, Anna Adams Nott was approximately thirty-five years of age, and Laura D. Sherman was approximately sixty-seven years of age.

### IX.

Pursuant to the assignments, the trustees of the aforesaid Sherman Trust paid out of the net income of that trust to Anna Adams Nott the total sum of \$1,200.00 during the calendar year 1940 and the total sum of \$1,200.00 during the calendar year 1941 for her support, and paid out of the net income of that trust to Anna Adams Nott the total sum of \$900.00 during the calendar year 1940 and the total sum of \$900.00 during the calendar year 1941, for the support and maintenance of Frederick Dickson K. Nott, minor child of [50] Anna Adams Nott; and said trustees paid out of the net income of said trust to Anna Adams Nott the total sum of \$900.00 during the calendar year 1940 and the total sum of \$900.00 during the calendar year 1941 for the support and maintenance of Gretchen K. Nott, minor child of Anna Adams Nott.

X.

Anna Adams Nott, Frederick Dickson K. Nott and Gretchen K. Nott are presently surviving and reside in the State of Washington. These persons resided in Hawaii from prior to April 16, 1936, until December 5, 1941. On the latter date, they left Hawaii and proceeded to the State of Washington, where they arrived during the year 1942 and have resided there at all times since their arrival. Under the laws of the State of Washington, the age of majority is twenty-one years. Under the laws of the Territory of Hawaii, the age of majority is twenty years.

XI.

On March 15, 1941, Laura D. Sherman filed with the Collector of Internal Revenue for the Territory of Hawaii her Federal Income Tax Return for the calendar year 1940. She included in this return \$9,332.40 representing the entire amount of the net income for the calendar year 1940 of the aforesaid Sherman Trust dated December 26, 1935, and reported in that return a taxable net income of \$26,172.86, and disclosed a tax liability of \$4,274.57, which was paid in four installments to Collector Fred H. Kanne as follows: [51]

Date Paid	Amount Paid
March 15, 1941.....	\$1,068.65
June 14, 1941.....	1,068.65
September 12, 1941.....	1,068.64
December 12, 1941.....	1,068.63
	<hr/>
	\$4,272.57

## XII.

On March 16, 1942, Laura D. Sherman filed with the same Collector of Internal Revenue her Federal Income Tax Return for the calendar year 1941. In this return, Mrs. Sherman included \$10,598.98 representing the entire amount of the net income for the calendar year 1941 of the aforesaid Sherman Trust dated December 26, 1935, and reported in that return a taxable net income of \$21,200.98, and disclosed a tax liability of \$6,046.15 which was paid in four installments to Collector Fred H. Kanne as follows:

Date Paid	Amount Paid
March 16, 1942.....	\$1,511.54
June 13, 1942.....	1,511.54
September 14, 1942.....	1,511.54
December 15, 1942.....	1,511.53
Total.....	<hr/> \$6,046.15

## XIII.

Thereafter, on August 5, 1944, Mrs. Sherman paid to Collector Fred H. Kanne a deficiency of \$90.00 in tax for the taxable year 1941, plus interest thereon of \$12.91, or a total of \$102.91, which is not involved in this controversy.

## XIV.

On March 14, 1944, Laura D. Sherman filed with the Collector of Internal Revenue at Honolulu, Hawaii, a claim for [52] refund of \$969.65, of the 1940 Federal Income Taxes paid by her and a claim for refund of \$1,434.81 of the 1941 Federal

Income Taxes paid by her. It was alleged in said claims for refund that Laura D. Sherman's distributive share of the aforesaid Sherman Trust of December 26, 1935, had been inadvertently overstated on the fiduciary return of the trustees in that trust by the sum of \$3,000.00 with respect to each of the taxable years 1940 and 1941; that Laura D. Sherman was only entitled to and actually received \$3,000.00 less than the distribution returned by the trustees as taxable to her; and Laura D. Sherman demanded an adjustment of her income for the years 1940 and 1941 by eliminating therefrom said \$3,000.00 of overstated income. Both claims were disallowed by the Commissioner of Internal Revenue, and no amount has been refunded to Laura D. Sherman on account of said total sum of \$2,404.46 claimed to be refundable with respect to the taxable years 1940 and 1941.

### XV.

That Fred H. Kanne was Collector of Internal Revenue of the United States of America for the District of Hawaii and a resident of Honolulu at all times from on or about August 1, 1933, until his death on December 24, 1946; that Agnes M. Kanne, the duly qualified and appointed Executrix of the Will and of the Estate of Fred H. Kanne, Deceased, was substituted as defendant in this cause by order of this Court on March 6, 1947.

## CONCLUSIONS OF LAW

Upon the record and evidence adduced in this case, [53] the Court makes the following conclusions of law:

## I.

The gifts of income conferred by the three respective assignments dated April 16, 1936, to Anna Adams Nott, Frederick Dickson K. Nott and Gretchen K. Nott, while substantial in amounts, were, respectively, upon the happening of any one of the conditions provided in said assignments, brought to an end and the respective assignment thereupon terminated.

## II.

Laura D. Sherman, the assignor, retained the entire reversionary interest in the income so assigned, which reversion, representing as it does a substantial economic interest in the Sherman Trust dated December 26, 1935, definitely requires the inclusion of the assigned income as part of the taxable gross income of the assignor under the provisions of Sec. 22(a) of the Internal Revenue Code and the applicable Treasury Regulations promulgated thereunder, and brings the taxability of such assigned income within the rationale of the Supreme Court's opinion in the case of *Harrison v. Schaffner*, 312 U. S. 579, and excludes it from the rationale of the Supreme Court's opinion in the case of *Blair v. Commissioner*, 300 U. S. 5, relied upon by the plaintiff herein.



III.

The defendant is sustained in his objection to the admissibility in evidence of the data set out in paragraphs VIII, IX, X and XI of the Supplementary Stipulation of Facts, respecting the life expectancies of the individuals named in said paragraph, on the ground that such information is [54] immaterial for any purposes in this case.

IV.

I conclude that judgment should be entered for the defendant, and the complaint herein dismissed, together with costs assessed against the plaintiff, and that a judgment order be entered accordingly.

Entry of judgment is hereby directed to be entered in conformity with the foregoing special findings of fact and conclusions of law.

Dated: November 20, 1947.

/s/ DELBERT E. METZGER.

[Endorsed]: Filed Nov. 21, 1947. [55]

In the District Court of the United States  
for the District of Hawaii

Civil No. 619

HAWAIIAN TRUST CO., LIMITED, Executor  
of the Will of Laura D. Sherman, Deceased,  
Plaintiff,

vs.

AGNES M. KANNE, Executrix under the Will of  
Fred H. Kanne, Deceased,  
Defendant.

### JUDGMENT OF DISMISSAL

Be it remembered that on November 10, 1947, there came on for trial the above-entitled and numbered action wherein this case having been submitted upon the pleadings, and stipulation of facts, and evidence having been adduced, and the Court being sufficiently advised, and having made and filed its opinion and findings of fact and conclusions of law herein, now therefore and in pursuance thereto,

It is hereby ordered and adjudged that the plaintiff have and recover nothing from Agnes M. Kanne, Executrix under the will of Fred H. Kanne, deceased, the defendant, and defendant have judgment herein dismissing the complaint with lawful costs in the action, for which let execution issue.

Signed at Honolulu, T. H., this 16th day of February, 1948.

/s/ DELBERT E. METZGER,  
United States District Judge.  
JAMES M. RICHMOND,  
Attorney for Plaintiff.  
RAY J. O'BRIEN,

United States Attorney for the District of Hawaii,  
Attorney for Defendant.

Approved as to form only, and expressly not approved as to contents.

/s/ JAMES M. RICHMOND,  
Attorney for Plaintiff.

Receipt of a copy of the within Judgment of Dismissal is hereby acknowledged this 11th day of February, 1948.

/s/ JAMES M. RICHMOND.

Entry of Judgment of Dismissal in Civil Docket on February 18, 1948.

/s/ E. C. ROBINSON,  
Deputy Clerk.

[Endorsed]: Filed February 17, 1948. [56]

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From the Minutes of the United States District  
Court for the District of Hawaii

Monday, November 10, 1947

[Title of Cause.]

On this day came Mr. James M. Richmond of the firm Anderson, Wrenn, & Jenks, counsel for the

plaintiff herein, and also came Mr. Leland T. Atherton, Special Assistant to the Attorney General of the United States, and Mr. Edward A. Towse, Assistant United States District Attorney, counsel for the defendant herein. This case was called for trial.

Certified copy of Decree of Divorce, Anna Adams Nott and F. Dickson Nott, was admitted in evidence as Plaintiff's Exhibit "A," marked and ordered filed.

Certificate of Assessments and Payments was admitted in evidence as Defendant's Exhibit No. 1 marked and ordered filed.

At 10:30 a.m., both sides rested.

Argument was then had by Mr. Richmond, followed at 11:15 a.m., by argument by Mr. Atherton.

At 11:35 a.m., the Court ordered that this case be continued at 1:45 p.m. this day.

At 1:48 p.m., Mr. Atherton continued his argument.

At 2:15 p.m., following the conclusion of argument, the Court stated that from the facts of the case and cases cited the Court was compelled to hold in favor of the defendant. The complaint was ordered dismissed and counsel for the government was ordered to prepare the findings of fact and conclusions of law. [57a]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Hawaiian Trust Company, Limited, Executor of the Will of Laura D. Sherman, deceased, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment of dismissal entered in this action on February 17, 1948.

/s/ JAMES M. RICHMOND,  
Attorney for Appellant, Hawaiian Trust Company,  
Limited, Executor of the Will of Laura D.  
Sherman, Deceased.

[Endorsed]: Filed March 17, 1948. [59]

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[Title of District Court and Cause.]

### BOND FOR COSTS ON APPEAL

Know All Men by These Presents, that we, Hawaiian Trust Company, Limited, Executor of the Will of Laura D. Sherman, deceased, as principal, and Home Insurance Company of Hawaii, as surety, are held and firmly bound unto Agnes M. Kanne, Executrix under the Will of Fred H. Kanne, deceased, in the full and just sum of Two Hundred Fifty Dollars (\$250.00) to be paid to the said Agnes M. Kanne, Executrix under the Will of Fred H. Kanne, deceased, her successors and assigns, to

which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents, sealed with our seals and dated this 16th day of March, 1948.

Whereas on February 17, 1948, in an action pending in the District Court of the United States for the District of Hawaii, between Hawaiian Trust Company, Limited, Executor of the Will of Laura D. Sherman, deceased, as plaintiff, and Agnes M. Kanne, Executrix under the Will of Fred H. Kanne, deceased, as [61] defendant, a judgment of dismissal was rendered against the said Hawaiian Trust Company, Limited, Executor of the Will of Laura D. Sherman, Deceased, and the said Hawaiian Trust Company Limited, Executor of the Will of Laura D. Sherman, deceased, having filed a notice of appeal from such judgment of dismissal to the United States Circuit Court of Appeals for the Ninth Circuit;

Now the condition of this obligation is such that if the said Hawaiian Trust Company, Limited, Executor of the Will of Laura D. Sherman, deceased, shall prosecute its appeal to effect and shall pay costs if the appeal be dismissed or the judgment affirmed, or such costs as the said Ninth Circuit Court of Appeals may award against the said Hawaiian Trust Company, Limited, Executor of the Will of Laura D. Sherman, deceased, if the judgment is modified, or in any other event, then



this obligation to be void; otherwise to remain in full force and effect.

HAWAIIAN TRUST  
COMPANY, LIMITED,  
Executor of the Will of  
Laura D. Sherman,  
Deceased.

By /s/ CARTER GALT,  
Its Vice President.

By /s/ L. A. WILLS,  
Its Asst. Vice Pres.

[Seal] HOME INSURANCE  
COMPANY OF HAWAII,

By /s/ A. L. WOODDELL,  
Attorney in Fact.

By /s/ MARY HINDS,  
Attorney in Fact. [32]

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 16th day of March, 1948, before me appeared A. L. Wooddell, and Mary Hinds, to me personally known, who, being by me severally duly sworn, did say that they are respectively the Attorneys-in-fact of the Home Insurance Company of Hawaii, Limited, a corporation of the Territory of Hawaii, duly appointed under Power of Attorney dated the 2nd day of February, 1948, which power of attorney is now in full force and effect; and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation

under the authority of its Board of Directors, and said A. L. Wooddell and Mary Hinds, severally acknowledge said instrument to be the free act and deed of said corporation.

[Seal]        /s/ ARCHIE IWANAGA,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1949.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 16th day of March, 1948, before me personally appeared Carter Galt and L. A. Wills, to me known, who being by me duly sworn did say that they are Vice President and Asst. Vice President, respectively, of Hawaiian Trust Company, Limited; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and the said Carter Galt and L. A. Wills acknowledged said instrument to be the free act and deed of said corporation.

[Seal]        /s/ ETHEL BALCOM,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires August 29, 1951.

[Endorsed]: Filed March 17, 1948. [63]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the United States District Court  
for the District of Hawaii:

Please prepare and certify a transcript of the record in this case, to be filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, upon the appeal herein, and include in such transcript the following:

1. Complaint, Exhibits A, B, C, D, E, and F, and Summons.
2. Answer.
3. Motion to Substitute Executrix as Defendant with Consent of Executrix.
4. Motion to Substitute Executor as Plaintiff with Consent of Defendant.
5. Stipulation of Facts.
6. Supplementary Stipulation. [65]
7. Plaintiff's Exhibit "A."
8. Defendant's Exhibit #1.
9. Special Findings of Fact and Conclusions of Law.
10. Judgment of Dismissal.
11. This Designation of Record on Appeal.
12. Statement of Points Relied Upon on Appeal.
13. Order Extending Time to File and Docket Records with the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: Honolulu, T. H., March 25, 1948.

/s/ JAMES M. RICHMOND,  
Attorney for Appellant.

[Endorsed]: Filed March 28, 1948. [66]

[Title of District Court and Cause.]

STATEMENT OF POINTS RELIED  
UPON ON APPEAL

Comes now Hawaiian Trust Company, Limited, appellant herein, and states that the points upon which it intends to rely on appeal in this case are as follows:

1. The Court erred in making and entering its Special Findings of Fact and Conclusions of Law dated November 20, 1947, in the above cause.

2. The Court erred in rendering and entering Judgment of Dismissal dated February 17, 1948, in the above cause.

3. The evidence respecting the life expectancies of Laura D. Sherman, Anna Adams Nott, Frederick Dickson K. Nott and Gretchen K. Nott was relevant to show that the possibility of a reverter to Laura D. Sherman of the assigned interest was remote, and the Court erred in excluding as immaterial such evidence offered by the appellant.

4. Each of the three assignments dated April 16, 1936, constituted a transfer of a portion of the equitable [68] interest of Laura D. Sherman in the corpus of the trust dated December 26, 1935, and the Court erred in not so finding and deciding.

5. Income paid to the assignees by virtue of said assignments was not taxable to Laura D. Sherman, and plaintiff is entitled to recover income taxes paid by Laura D. Sherman on account of said income, and the Court erred in not giving judgment for plaintiff accordingly.

6. Each of the three assignments dated April 16, 1936, was a substantial disposition of the particular interest of Laura D. Sherman in the trust dated December 26, 1935 thus assigned, and the Court erred in finding and deciding that the income from such assigned interests was taxable to the assignor, Laura D. Sherman.

7. The reversionary interest of Laura D. Sherman in the interests transferred by the said three assignments was not substantial, particularly in relation to the interests transferred, and the Court erred in finding and deciding that the said reversionary interest was a substantial economic interest in the trust dated December 26, 1935.

8. The Court erred in finding and deciding that the retention of the reversionary interest by Laura D. Sherman in the interests assigned by her as aforesaid required the inclusion in her taxable gross income of income paid to the assignees by virtue of the said assignments.

9. The Court erred in finding and deciding that the facts of this case are controlled by the decision in *Harrison [69] v. Schaffner*, 312 U. S. 79 rather than *Blair v. Commissioner*, 300 U. S. 5.

Dated at Honolulu, Hawaii, March 24, 1948.

HAWAIIAN TRUST

COMPANY, LIMITED,

Executor of the Will of Laura  
D. Sherman, Deceased.

By /s/ JAMES M. RICHMOND,

Attorney for Appellant.

[Endorsed]: Filed March 29, 1948. [70]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT, TO TRANSCRIPT OF RECORD  
ON APPEAL

United States of America,  
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing pages numbered 1 to 72, inclusive, are a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and that the costs of the foregoing transcript of record are \$9.70 and that said amount has been paid to me by the appellant.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 19th day of April 1948.

[Seal]      /s/ WM. F. THOMPSON, JR.,  
Clerk, United States District  
Court, District of Hawaii.



PLAINTIFF'S EXHIBIT A

In the Circuit Court of the First Judicial Circuit  
Territory of Hawaii, Division of Domestic  
Relations

D. No. 16861

At Chambers—In Divorce

ANNA ADAMS NOTT,

Libellant,

vs.

F. DICKSON NOTT,

Libellee.

1st Circuit Court, Territory of Hawaii. Filed  
1936 Apr. 28 AM 9 10. Chas K. Buchanan (s),  
Clerk.

DECREE OF DIVORCE

On this 28th day of April, A. D. 1936, at the  
courthouse in the City and County of Honolulu,  
Territory of Hawaii, in the public court room of  
the judge of said court, came on to be heard the  
libel of the above named libellant, praying that the  
bonds of matrimony heretofore and then existing  
between the said Anna Adams Nott and F. Dickson  
Nott be dissolved by reason of the desertion by the  
libellee of the libellant, Frank E. Thompson, Esq.,  
appearing for the libellant, and William B. Lymer,  
Esq., appearing for the libellee, and the said libel-  
lant being present in court, strict and exact proof  
was made to this court by the libellant that the  
said parties are legally intermarried, and that the

allegations in her libel are true, and the court having heard all the evidence and being fully advised in the premises, does find:

That the allegations in the libel are true.

It Is Therefore Ordered, Adjudged and Decreed that the bonds of matrimony heretofore and now existing between the said Anna Adams Nott and F. Dickson Nott be and the same are hereby dissolved by reason of the desertion by the libellee of the libellant.

It Is Further Ordered, Adjudged and Decreed that the care, custody and control of Frederick Nott, a boy, and Gretchen Nott, a girl, minor children of said marriage, be and it is hereby awarded to said libellant, with the right of the libellee to visit said minor children at any and all reasonable times.

It Is Further Ordered, Adjudged and Decreed that said minor children may be removed from the jurisdiction of this court, to wit, to the State of Washington, or elsewhere on the mainland of the United States; that until the further order of the court herein, the said libellee shall pay for the care, custody, education and maintenance of said children, the sum of Seventy-Five Dollars (\$75.00) monthly to each minor child and until said minor children shall have respectively achieved their majority.

And it appearing to the court by the admission of counsel that all property rights have been adjusted between the parties and with the consent of the parties hereto, which consent is

evidenced by the signatures of the libellant and libellee in the margin hereof,

/s/ ANNA ADAMS NOTT,  
Libellant.

/s/ F. DICKSON NOTT,  
Libellee.

It Is Further Ordered, Adjudged and Decreed that said libellee shall pay to said libellant as alimony during the time she shall remain unmarried, the sum of One Hundred Dollars (\$100.00) per month.

All payments hereunder shall be made through the clerk of the above entitled court, the first payment upon the signing of this decree.

This Decree Shall Take Effect From and After the Date Hereof.

[Seal]     /s/ F. M. BROOKS,  
Judge of the above entitled  
court.

OK

/s/ F. E. THOMPSON.

OK

/s/ WILLIAM B. LYMER.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in this office.

[Seal]     /s/ MAYDEEN I. FULLER,  
Clerk, Circuit Court, First  
Circuit, Territory of  
Hawaii.

## PLAINTIFF'S EXHIBIT "B"

In the United States District Court  
for the Territory of Hawaii

Civil No. 619

HAWAIIAN TRUST COMPANY, LIMITED,  
Executor of the Will of Laura D. Sherman,  
Deceased,  
Plaintiff,

vs.

AGNES M. KANNE, Executrix under the Will  
of Fred H. Kanne, Deceased,  
Defendant.

Admitted in Evidence subject to objection as to  
relevancy of certain sections. /s/ D. E. Metz-  
ger, Judge.

## SUPPLEMENTARY STIPULATION

It Is Hereby Stipulated by and between the parties hereto through their respective attorneys that the following statements of fact shall be considered as true. It is also agreed by and between the parties hereto that they may also produce oral testimony at the trial of this case and offer any additional evidence, documentary or otherwise, provided such additional evidence shall not vary or in any way contradict or conflict with the facts herein stipulated to be taken as true, and provided further that such additional evidence is properly admissible.

## I.

On December 26, 1935, George Sherman, husband of Laura D. Sherman, entered into an agreement with Laura D. Sherman and Hawaiian Trust Company, Limited, a Hawaiian corporation, said agreement being that hereinbefore described in the complaint as Exhibit "A" and incorporated herein by reference and made a part hereof for all purposes. Said agreement created an irrevocable trust by which Laura D. Sherman and Hawaiian Trust Company, Limited, were trustees and provided that all of the net income derived from the trust estate thereby created be paid to Laura D. Sherman during her lifetime.

## II.

During the calendar year 1940 the said trustees actually paid to Laura D. Sherman the total amount of \$6,332.40 of the net income of said trust estate. During the calendar year 1941 the said trustees actually paid to Laura D. Sherman the total sum of \$7,598.98 of the net income of said trust estate.

## III.

On March 15, 1941, Mrs. Laura D. Sherman filed with the Collector of Internal Revenue for the District of Hawaii her federal income tax return for the calendar year 1940. Mrs. Sherman included in this return \$9,332.40 representing the entire amount of the net income for the calendar year 1940 of the trust dated December 26, 1935, hereinbefore described as Exhibit A and reported in that return a taxable net income of \$26,172.86, and dis-

said Anna Adams Nott pursuant to said assignments. Pursuant to the assignment described as Exhibit "B," said trustees paid out of the net income of said trust to said Anna Adams Nott the total sum of \$1200 during the calendar year 1940, and the total sum of \$1200 during the calendar year 1941. Pursuant to the assignment described as Exhibit "C," said trustees paid out of the net income of said trust to said Anna Adams Nott the total sum of \$900 during the calendar year 1940, and the total sum of \$900 during the calendar year 1941. Pursuant to the assignment described as Exhibit "D," said trustees paid out of the net income of said trust to said Anna Adams Nott the total sum of \$900 during the calendar year 1940, and the total sum of \$900 during the calendar year 1941.

#### VIII.

Said Anna Adams Nott, divorced wife of Frederick Dickson Nott, was born in Honolulu, Hawaii, on April 28, 1901. On or about April 16, 1936 her age was approximately 34 years, 11 months. The Combined or Actuaries Experience Tables (printed in Wolfe, *Inheritance Tax Calculations* (2nd Ed.)) states that the life expectancy of a person of that age is 30.93 years. The American Experience Table of Mortality (printed in Wolfe, *Inheritance Tax Calculations* (2nd Ed.)) states that the life expectancy of a person of that age is 31.84 years. The defendant objects to the admissibility in evidence of information showing the life expectancy of Anna Adams Nott as of on or about April 16, 1936, on



the ground that such information is immaterial and irrelevant to the issue involved in this proceeding.

### IX.

Said Frederick Dickson K. Nott, son of said Anna Adams Nott, was born in Honolulu, Hawaii, on November 22, 1925. On or about April 16, 1936, his age was approximately ten years, five months. The Combined or Actuaries Experience Tables (printed in Wolfe, Inheritance Tax Calculations (2nd Ed.)) states that the life expectancy of a person of that age is 48.08 years. The American Experience Table of Mortality (printed in Wolfe, Inheritance Tax Calculations (2nd Ed.)) states that the life expectancy of a person of that age is 48.46 years. The defendant objects to the admissibility in evidence of information showing the life expectancy of Frederick Dickson K. Nott as of on or about April 16, 1936, on the ground that such information is immaterial and irrelevant to the issue involved in this proceeding.

### X.

Said Gretchen K. Nott, daughter of said Anna Adams Nott, was born in Honolulu, Hawaii, on December 27, 1926. On or about April 16, 1936, her age was approximately nine years, four months. The Combined or Actuaries Experience Tables (printed in Wolfe, Inheritance Tax Calculations (2nd Ed.)) states that the life expectancy of a person of that age is 48.80 years. The American Experience Table of Mortality (printed in Wolfe, Inheritance Tax Calculations (2nd Ed.)) states

that the life expectancy of a person of that age is 49.14 years. The defendant objects to the admissibility in evidence of information showing the life expectancy of Gretchen K. Nott as of on or about April 16, 1936, on the ground that such information is immaterial and irrelevant to the issue involved in this proceeding.

#### XI.

Said Laura D. Sherman, mother of said Frederick Dickson Nott, was born on July 27, 1869. On or about April 16, 1936, her age was approximately 66 years, 9 months. The Combined or Actuaries Experience Tables (printed in Wolfe, Inheritance Tax Calculations (2nd Ed.)) states that the life expectancy of a person of that age is 10.085 years. The American Experience Table of Mortality (printed in Wolfe, Inheritance Tax Calculations (2nd Ed.)) states that the life expectancy of a person of that age is 10.13 years. The defendant objects to the admissibility in evidence of information showing the life expectancy of Laura D. Sherman as of on or about April 16, 1936, on the ground that such information is immaterial and irrelevant to the issue involved in this proceeding.

#### XII.

Said Anna Adams Nott, Frederick Dickson K. Nott and Gretchen Nott are presently surviving and reside in the State of Washington. Said persons resided in Hawaii from prior to April 16, 1936, until December 5, 1941. On December 5, 1941, said persons left Hawaii, proceeding to the State of Wash-

ington. Said persons arrived in Washington during the year 1942 and have resided there at all times since arrival. Under the laws of the State of Washington the age of majority is twenty-one years. (Remingtons Revised Statutes, Sections 10548, 10549.) Under the laws of the Territory of Hawaii the age of majority is twenty years. (Revised Laws of Hawaii, 1945, Section 12261.) Laura D. Sherman died June 11, 1947.

Dated at Honolulu, Hawaii, November 7, 1947.

HAWAIIAN TRUST

COMPANY, LIMITED,

Executor of the Will of Laura D. Sherman, Deceased, Plaintiff,

By /s/ JAMES M. RICHMOND,

Its Attorney.

AGNES M. KANNE,

Executor under the Will of Fred H. Kanne, Deceased, Defendant.

By /s/ RAY J. O'BRIEN,

United States Attorney for  
the District of Hawaii.

By /s/ RAY J. O'BRIEN,

Attorney for Defendant.



DEPT'S EXHIBIT

# CERTIFICATE OF ASSESSMENTS AND PAYMENTS

11909

#1

OFFICE OF COLLECTOR OF INTERNAL REVENUE

In re: Laura S. Sherman

(Name of taxpayer)

DISTRICT OF HAWAII

c/o Har's Trust Co., Honolulu, T.H.

(Address)

To ~~THE COMMISSIONER OF INTERNAL REVENUE~~

ATTENTION:

Mr. Leland T. Atherton

Special Assistant to the Attorney General

(Refer to symbols and date of letter requesting this certification)

The following is a transcript of the records of this office covering the accounts of the taxpayer named  
**Income Tax**  
above in respect to \_\_\_\_\_

(Character of tax)

for the taxable years 1940 and 1941

(Period covered)

1. TAX- ABLE PERIOD	2. LIST AND YEAR	3. ACCT. NO. OR PAGE AND LINE	4. AMOUNT ASSESSED	PAID, ABATED, OR CREDITED		7. PAID AM. CR.	8. ADJUSTMENT OF OVERASSESSMENTS
				5. DATE OR SCHEDULE NO.	6. AMOUNT		
1940	Mar/41	20612	4774	97	3-15-41 1048	65	FE
					6-14-41 1048	65	FE
					9-12-41 1048	64	FE
					12-12-41 1048	63	FE
							Refund filed
							3-9-43 Amt. 171.44
							allowed IT-90248
							2-10-44
							Refund filed
							3-14-44 Amt. 969.65
							Rejected Sch. 30032
							5-3-45
1941	May/42	306703	6046	15	3-16-42 1511	54	FE
					6-13-42 1511	54	FE
					9-14-42 1511	54	FE
					12-15-42 1511	53	FE
							Refund filed
							3-14-44
							Amt. 1,434.81
							Rejected Sch. 30032
							5-3-45
1941	Aug-25-1941	518103/1944	90	00			
BAR			Int 12	91	8-8-44 102	91	FE
			(Int to 8-5-46)				

I CERTIFY that the foregoing transcript of the accounts of the taxpayer named above in respect to the taxes specified, is true and complete for the period stated, and that all assessments and payments of tax, penalty and interest, and all abatements, credits, and refunds relating thereto as disclosed by the records of this office, are shown therein.

Date of certificate October 27 1947

85





[Endorsed]: No. 11909. United States Circuit Court of Appeals for the Ninth Circuit. Hawaiian Trust Company, Limited, Executor of the Will of Laura D. Sherman, Appellant, vs. Agnes M. Kanne, Executrix under the Will of Fred H. Kanne, Deceased, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed April 23, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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The United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11909

HAWAIIAN TRUST COMPANY, LIMITED,  
Executor of the Will of Laura D. Sherman,  
Appellant,

vs.

AGNES M. KANNE, Executrix under the Will of  
Fred H. Kanne, Deceased,  
Appellee.

STATEMENT OF POINTS TO BE RELIED  
UPON AND DESIGNATION OF THE  
RECORD TO BE PRINTED

Comes now Hawaiian Trust Company, Limited,  
Executor of the Will of Laura D. Sherman, the

Appellant in the above entitled cause, and states that the points upon which it intends to rely in this court in this case are as follows:

I.

The District Court of the United States for the District of Hawaii erred in making and entering its Special Findings of Fact and Conclusions of Law dated November 20, 1947, in the above cause.

II.

The District Court of the United States for the District of Hawaii erred in rendering and entering Judgment of Dismissal dated February 17, 1948, in the above cause.

III.

The evidence respecting the life expectancies of Laura D. Sherman, Anna Adams Nott, Frederick Dickson K. Nott and Gretchen K. Nott was relevant to show that the possibility of a reverter to Laura D. Sherman of the assigned interest was remote, and the District Court of the United States for the District of Hawaii erred in excluding as immaterial such evidence offered by the appellant.

- IV.

Each of the three assignments dated April 16, 1936, constituted a transfer of a portion of the equitable interest of Laura D. Sherman in the corpus of the trust dated December 26, 1935, and the District Court of the United States for the District of Hawaii erred in not so finding and deciding.

Income paid to the assignees by virtue of said assignments was not taxable to Laura D. Sherman, and appellant is entitled to recover income taxes paid by Laura D. Sherman on account of said income, and the District Court of the United States for the District of Hawaii erred in not giving judgment for appellant accordingly.

## VI.

Each of the three assignments dated April 16, 1936, was a substantial disposition of the particular interest of Laura D. Sherman in the trust dated December 26, 1935, thus assigned, and the District Court of the United States for the District of Hawaii erred in finding and deciding that the income from such assigned interests was taxable to the assignor, of Laura D. Sherman.

## VII.

The reversionary interest of Laura D. Sherman in the interests transferred by the said three assignments was not substantial, particularly in relation to the interests transferred, and the District Court of the United States for the District of Hawaii erred in finding and deciding that the said reversionary interest was a substantial economic interest in the trust dated December 26, 1935.

## VIII.

The District Court of the United States for the District of Hawaii erred in finding and deciding that the retention of the reversionary interest by

Laura D. Sherman in the interests assigned by her as aforesaid required the inclusion in her taxable gross income of income paid to the assignees by virtue of the said assignments.

IX.

The District Court of the United States for the District of Hawaii erred in finding and deciding that the facts of this case are controlled by the decision in *Harrison v. Schaffner*, 312 U. S. 79 rather than *Blair v. Commissioner*, 300 U. S. 5.

Appellant further states that all of the transcript of record filed in this court is deemed necessary to be printed for the consideration of the points set forth above.

Dated at Honolulu, Hawaii, April 21, 1948.

HAWAIIAN TRUST

COMPANY, LIMITED,

Executor of the Will of Laura D. Sherman, Deceased.

By /s/ JAMES M. RICHMOND,

Attorney for Appellant.

[Endorsed]: Filed April 23, 1948.